

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

UNITED STATES
COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA

FILED SEP 24 1936

IN THE

Monroe P. ...

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**United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA**

No. 6789

SARAH YOUNG, *Appellant,*

v.

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- (1) ROBERT J. HOAGE, Deputy United States Employees' Compensation Commissioner for the District of Columbia,
- (2) MCGUIRE & ROLFE, INC., and
- (3) EMPLOYERS' LIABILITY ASSURANCE CORP., LTD.,
Appellees.

BRIEF FOR APPELLEES

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United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA

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v.

- (1) ROBERT J. HOAGE, Deputy United States Employees' Compensation Commissioner for the District of Columbia,
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BRIEF FOR APPELLEES No. 2 AND No. 3

SHORT STATEMENT OF THE CASE

Appellant is seeking to have set aside a decree of the District Court of the United States for the District of Columbia dated May 19th, 1936, dismissing appellant's bill in equity, brought under the provisions of Section 21(b) of the Workmen's Compensation Act in force in the District of Columbia (44 Stat. 1424; 45 Stat. 600) and thereby affirming the order of the Deputy Commissioner filed February 10th, 1936, rejecting appellant's claim, as widow of one Robert Young, deceased, for death benefits under said statute.

The entire transcript of proceedings before the Deputy Commissioner at hearings on January 10th, 1936

and February 6th, 1936, has been brought up as a part of the record herein. It appears therefrom that Robert Young was a colored laborer for the contracting firm of McGuire & Rolfe, Inc., (defendant No. 2) and while so employed, on April 28, 1933, he injured the fingers of his left hand. He was treated at the clinic of Dr. Dunlap P. Penhallow for a contused laceration of the 3rd finger and a contused wound of the 4th finger (x-ray showing no bone involvement) (R. 81). On May 1, 1933, his hand was dressed again and showed no evidence of any infection. The records of the Employer (R. 190) showed that the employee worked at his usual duties eight hours on April 28th (Friday); eight hours on April 29th (Saturday); and eight hours on May 1st (Monday). The foreman on the job testified (R. pp. 181-184) that Young worked all day at his usual duties without complaint regarding the injury to his hand. After returning to his home Monday evening, the widow, appellant herein, testified that he complained of his hand hurting him and that he had "chills, fever and sweats." The Police Incidental (R. p. 111) showed that the employee had been taken suddenly ill at his home at about 12:45 A. M. on May 2nd, 1933, and had been pronounced dead by a staff physician from Emergency Hospital at 1 A. M. An autopsy performed by the coroner's office on May 2, 1933, disclosed that death was due to causes which had no connection with the hand injury.

Thereafter the widow gave due notice of his death to the Employer and to the Deputy Commissioner by letter dated May 17, 1933, in which it is stated:

"In compliance with Section 12 of the Longshoreman's and Harbor Worker's Act, I beg leave herewith to notify you of the death from accident of Robert Young * * *"

"Cause of death as stated by coroner's cer-

tificate was 'chronic myocarditis, arth hypertrophy, and acute dilatation' " (R. p. 191).

The reply of the Deputy Commissioner under date of June 5th, 1933 (R. p. 212), was in part as follows:

"The letter of Sarah Young advised this office that Robert Young met his death on May 2, 1933, and that a coroner's certificate shows that his death was caused from 'chronic myocarditis, and acute dilation.'

There is no record in this office that the man's death was in any way connected with the injury to his fingers. However, if claim is being made, it must be established by proper medical evidence in written form to this office that the deceased came to his death as a direct result of the injury to his three fingers on April 28, 1933."

Counsel for appellant testified that no data on "chills and sweats" was given to him until after August, 1935 (R. pp. 194, 223), and that he was unable to file the required medical evidence because of lack of a complete chain of causation (R. pp. 170, 229).

Neither the appellant nor her attorney filed any claim for death benefits until December 10, 1935 (R. pp. 173, 192).

Thereafter on January 10th, 1936, a formal hearing was held by the Deputy Commissioner at which the Insurance Carrier raised the question of failure to file a claim within the statutory period. A second hearing was granted appellant on February 6th, 1936, for the purpose of producing testimony showing that claim had been filed on time.

On February 10th, 1936, the Deputy Commissioner filed his order rejecting the claim on the grounds: (1) that death was due to natural causes and not to the injury of April 28, 1933; and (2) that the claimant had not filed her claim within the one-year statutory limit of Section 13 of the Act.

A bill for injunction was filed in the lower court by appellant and motions to dismiss by the respondents named therein were sustained. This appeal resulted.

QUESTIONS INVOLVED

This Court is asked to decide, in effect, whether or not the lower court erred in finding that the order of the Deputy Commissioner rejecting the appellant's claim was "*in accordance with law*" on the following matters:

(1) That the appellant herein, as widow of the deceased employee Robert Young, had failed to file her claim for death benefits within the period of one year from the date of death on May 2, 1933, as required by Section 13 of the Act.

(2) That there was substantial and competent evidence to support the findings of fact of the Deputy Commissioner that the death of the employee was due to natural causes unrelated to the minor hand injury on April 28, 1933.

SECTIONS OF THE COMPENSATION ACT INVOLVED

For convenient reference, the following pertinent extracts from the Compensation Act are set forth below:

Section 12 (a). Notice of an injury or death in respect of which compensation is payable under this Act shall be given within thirty days after the date of such injury or death (1) to the deputy commissioner in the compensation district in which such injury occurred and (2) to the employer.

Section 13 (a). The right to compensation for disability under this Act shall be barred unless a claim therefor is filed within one year after the

injury, and *the right to compensation for death shall be barred unless a claim therefor is filed within one year after the death*, except that if payment of compensation has been made without an award on account of such injury or death a claim may be filed within one year after the date of the last payment. *Such claim shall be filed with the Deputy Commissioner in the compensation district in which such injury or such death occurred.*

(b). Notwithstanding the provisions of subdivision (a) failure to file a claim within the period prescribed in such division shall not be a bar to such right *unless objection to such failure is made at the first hearing of such claim in which all parties in interest are given reasonable notice and opportunity to be heard.* (Italics supplied.)

ARGUMENT

I. Claim Was Not Filed Within One Year After the Death

The Deputy Commissioner in his order filed February 10th, 1936, found—(R. pp. 240, 241):

“* * * that on November 10, 1935, a claim was filed by Sarah Young, who alleged to be the surviving wife of the deceased employee; * * *

“It is found that the claimant herein filed notice as provided in Section 12 of the Act, but did not file claim for compensation within the statutory limit of one year as required in Section 13 of the Act.”

and rejected the claim because—

“The claimant herein did not file claim for compensation within the statutory period of one year as required in Section 13 of the Act.”

Section 13 of the compensation statute provides that the right to compensation for death shall be barred unless a claim therefor is filed within one year after the death, and such claim shall be *filed* with the

Deputy Commissioner. It further provides that, unless objection to the failure to file the claim on time *is raised at the first hearing*, the claim is not barred.

The transcript of proceedings before the Deputy Commissioner at the *first hearing* on January 10th, 1936, clearly shows that objection by the insurance carrier and employer to the widow's failure to file her claim within one year from the date of death on May 2nd, 1933, was made (R. pp. 22, 23, 27, 28 and 175). The record also indicates that appellant's counsel was informed prior to the hearing that this question would be raised (R. p. 175) and knew at the time of that first hearing that the jurisdictional point was being made (R. p. 26).

Appellant cites in her brief the case of *Maryland Casualty Company v. Hodge*, 49 Fed. (2d) 127, arising under the Texas Compensation Law, wherein a worker failed, by a few days, to file his claim for compensation within the six-months statutory period. Section 4(a) of article 8307, Revised Civil Statutes of Texas, provides for notice within thirty days and a claim within six months *but* it also permits the compensation board for good cause in meritorious cases to *waive strict compliance with the limitations as to notice and the filing of the claim*. The board in that case did waive that irregularity in view of the facts and the few days tardiness.

There is no such provision in the District of Columbia statute. Section 13 provides that the statutory limit of one year shall not be applicable in cases where the employee is an infant or mentally incompetent. On the other hand, some discretion to excuse failure to give notice within thirty days is given to the Deputy Commissioner by Section 12 of the Act.

The court in *Kropp v. Parker*, 8 F. Supp. 290, also cited by appellant, based its liberal construction of

the limitation section of the statute on the grounds that in those cases where neither the employee nor the employer was aware of the latent injury, then the period within which to file claim should run from the date when the injury was actually discovered, or became compensable.

Appellant would have the Court rule in the present case that she should not be barred because of her failure to file claim due to the fact that she was not able to establish a complete chain of causation between the death on May 2, 1933, and the accident on April 28, 1933, until after August, 1935, when medical evidence became available. We submit that such contention is without merit in law or in fact and is no basis for the extension of the limitation period of the statute.

Notice of the death was given by appellant to both the Deputy Commissioner and to the employer by her letter of May 17, 1933, but by no distortion of language could it be said that that same notice was also in fact *a claim*, as an examination of that same letter will disclose (R. p. 191). The first paragraph states that she is giving *notice* of the death *in compliance with Section 12 of the Act*, and the last paragraph states that death was due to "chronic myocarditis, with hypertrophy, and acute dilatation"; but there is no application for death benefits or claim showing that the death was due to the accident. It could not be reasonably inferred that this *notice* showed a causal connection between the minor left hand injury and a death attributed to heart disease, so that both the employer and the Deputy Commissioner should have immediate reason to believe that death was due to the minor accident. Counsel for appellant, as a witness on her behalf, admits (R. p. 229) that he could not file the medical evidence required by the Deputy Commissioner because there was "lack of a complete

chain of causation.” The claims examiner, whom appellant’s counsel visited in the office of the Deputy Commissioner, testified that he did not see appellant or her counsel until August 7, 1935 (more than two years after the employee’s death), on which date appellant’s counsel “desired that this office (the Deputy Commissioner) hold the case open until he had perfected this testimony (meaning medical) or these reports that he had anticipated he was going to get” (R. pp. 233-234).

It is our contention that the limitation prescribed by Section 13 of the Act is mandatory, and in support thereof we cite the case of *Romaniuk v. Locke*, 3 F. Supp. 529, decided by the U. S. District Court, S. D. New York, November 23, 1932. The case arose under the Longshoreman’s and Harbor Workers’ Compensation Act (33 U.S.C.A., paragraph 901 et seq.), in which Section 913 is similar in all respects to Section 13 of the local statute. The court stated in its opinion:

“* * * In dealing with other statutes substantially identical in effect it has been held, uniformly so far as I can discover, that it is a part of the cause of action to file within the time prescribed, and that failure to do so is fatal to recovery. * * *

“Section 913 specifies several things which may postpone the date for filing. None of these is alleged. The burden is on the plaintiff to show that the filing was within the prescribed time. Cf. *Coronas case*, 230 Federal 546. * * *

On October 4, 1935, counsel for appellant wrote to the Deputy Commissioner averring for the first time that the letter of May 17, 1933, was “a claim” but saying (R. p. 194) that “it was not until August 6, 1935, that such additional evidence was possible.”

It is rather significant to note at this point, however, that Doctor Jackson, who furnished one of the

medical reports in support of appellant's claim, testified (R. p. 29) that he examined the deceased *four* days after his death on May 2, 1933, and yet his signed medical report was not filed until *October 14, 1935* (R. pp. 172, 199).

On December 10, 1935, appellant's counsel wrote to the Deputy Commissioner (R. p. 192) as follows: "Enclosed herewith is formal claim required by you in the case of Robert Young, deceased."

As the letter of May 17, 1933, on which appellant seeks to rely as a claim, shows on its face that it is merely *a notice* of employee's death and therefore does not meet the requirements of the statute as *a claim*, and as the evidence clearly indicates that claim was not filed until November 10, 1935, we therefore submit that appellant failed to prove that she had filed her claim within the statutory period of one year from the date of death on May 2, 1933, and that such failure bars the claim. The Deputy Commissioner's finding to that effect is therefore "in accordance with law."

II. The Employee's Death Was Due to Natural Causes Unrelated to the Minor Injury

The Deputy Commissioner in his order filed February 10th, 1936 (R. pp. 240-241) found—

"* * * that the employee died on May 2, 1933, as a result of chronic myocarditis with hypertrophy, contributory cause acute dilatation, resulting from natural causes and not related to the injury of April 28, 1933;"

and in rejecting the claim held—

"1. That the death of the employee herein was due to natural causes and not to the injury sustained by him on April 28, 1933."

It has been held in innumerable opinions of this court and by the United States Supreme Court that, if there is evidence before the Deputy Commissioner to support his findings of fact, the order of the Deputy Commissioner is *in accordance with law*. The courts do not have the right to substitute their own beliefs for the findings of the Deputy Commissioner and the right to weigh the evidence and to draw reasonable inferences therefrom is solely within the authority of the Deputy Commissioner. *Crowell v. Benson*, 285 U. S. 22, 46; *Voehl v. Indemnity Insurance Company of North America*, 288 U. S. 162; *Del Vecchio v. Bowers*, 64 W.L.R. 4, 296 U. S. 280; *Malone v. Hoage*, 73 F. (2d) 855.

The contention of the appellant, which the Deputy Commissioner refused to accept, was that the employee Young had developed an infection from the injury to his left hand on April 28, 1933, probably from streptocci germs, which spread into his blood stream and brought about a general septicemia from which he died or which might have affected his heart and brought on the cardiac condition which was the real cause of his death.

An examination of the transcript of evidence adduced before the Deputy Commissioner will disclose ample, competent and substantial evidence to support the finding of the Deputy Commissioner that the employee's death was unrelated causally to the minor injuries sustained.

We will make brief reference to the pertinent sections of the evidence for that purpose.

Dr. Dunlap P. Penhallow, at whose clinic the employee was treated on April 28, 1933, the date of the hand injury, and re-dressed on May 1, 1933, testified (R. pp. 80 to 101) that at the time of the re-dressing on May 1st, 1933, there was no evidence of any infec-

tion; that there could have been no septicemia without some evidences of local infection and constitutional symptoms, especially if due to streptocci germs; and that septicemia sufficient to cause death could not have developed in 8 hours. He further stated (R. p. 99):

“Personally I can say only what I have, and that is that *I can see no connection between this minor injury and this sudden death.*” (Italics supplied.)

Dr. A. Magruder MacDonald, District Coroner, testified (R. pp. 110 to 132) that the Police Incidental showed “nothing suspicious” about the death; that the autopsist’s findings gave the cause of death as chronic myocarditis, with hypertrophy, contributory cause, acute dilatation; that he issued a certificate that death was due to natural causes because there was no question as to any injury; that, if the autopsy had disclosed any infection, a notation of septicemia would have been included in the findings; and that death from chronic myocarditis is frequent with some other contributing factor, which in this case was an acute cardiac dilatation.

Dr. James W. Esler, eminent heart specialist, testified (R. pp. 134 to 152) that he could not conceive that septicemia, having its onset in the evening of May 1st, could kill in so short a time; that sudden death from septicemia is the rarity, but sudden death in heart disease is common; that Young could have worked all day on May 1st with heart disease and then died suddenly that night; that he did not believe that a septicemia of a few hours could be an overwhelming factor causing cardiac decompensation; that it is a fair statement that most patients who have hypertrophy or enlargement of the heart, die of heart disease; that septicemia was not a factor in the heart condition in this

case; and that sudden death could result from chronic myocarditis and hypertrophy with an intermediary factor. Dr. Esler further stated (R. p. 134):

“With the most evidence or with the best evidence that there is, it seems to me much more likely that the man died a cardiac death than a septicemia death” (R. p. 138).

“From the evidence that I have heard I can see no causative connection” (meaning between the minor injury and the sudden death).

The evidence showed that the employee had worked a full day on the date of the injury, a full day on the next day, rested on the intervening Sunday, and worked a full day on the day before his death (R. p. 190). He made no complaint of pain or of his injury to the foreman on the job but on the other hand told him that he felt all right (R. pp. 181-184).

It is true that appellant's medical witnesses, Doctors A. B. Jackson and George W. Adams, testified that, in their opinions, septicemia was the most likely cause of the death, despite the testimony of the other physicians and the autopsy findings of the coroner's office. It must be pointed out, however, that Dr. Jackson only saw the decedent on May 6, 1933, after the autopsy had been performed and after he had already been embalmed for burial. Dr. Adams did not see or know the decedent. Neither doctor consulted the clinic where the minor injuries had been treated and dressed nor examined the records of the autopsy.

Dr. Esler, in disagreeing with the theories advanced by these two doctors, pointed out that (R. p. 142) “I do not think that they testified to the ‘probability’.” An examination of the testimony of these two medical witnesses for the appellant will show the correctness of Dr. Esler's observation, for they use the terms

“might have,” “possibly,” “could have,” and “within the realm of possibility.”

The Deputy Commissioner had all the witnesses before him and had the benefit of hearing the testimony given by the witnesses. That he judged the death of the employee to be due to natural causes unrelated to the minor injury rather than due to some medical theory of septicemia traceable to the minor injury is the objection made to this Court by appellant. We submit that there was substantial and competent medical testimony to support the findings of the Deputy Commissioner and that his decision as to the cause of death is therefore final and conclusive.

III. The Hearings Were Fair and Regular

In appellant's assignment of error No. 7, some reference is made to “irregularity at the hearing before the deputy commissioner.”

We make no comment on this statement other than to say that this objection is without merit, as an examination of the record will disclose that appellant and her attorney were afforded every opportunity to be heard and given a fair and full hearing on two occasions. It will even be disclosed that the Deputy Commissioner went out of his way to meet the objection of the appellant's counsel at the first hearing on January 10, 1936, that he was not prepared to meet the issue of failure to file the claim within the jurisdictional period, by granting him another hearing on February 6, 1936, for the sole purpose of permitting him to bring in all the testimony that he might adduce to overcome that objection. That the Deputy Commissioner may have become slightly irritable at times in the conduct of the hearings is understandable upon an examination of the record.

CONCLUSION

On behalf of appellees, we respectfully submit that the order of the Deputy Commissioner rejecting the appellant's claim for death benefits on the grounds that the employee's death was due to natural causes unrelated to the minor injury sustained in the course of employment, and that appellant had failed to file her claim within the statutory period of one year from the death in accordance with Section 13 of the Act, was "in accordance with law" and that his findings of fact in said order are supported by substantial and competent evidence. The decree of the lower court filed May 19, 1936, dismissing appellant's bill in equity was therefore correct and should be affirmed.

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